25-6804

NO. _____

IN THE UNITED STATES SUPREME COURT

ROBIN O'NEILL

Petitioner,

v.

NICHOLAS DEML,
COMMISSIONER, VERMONT
DEPARTMENT OF CORRECTIONS

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Robin O'Neill, pro se
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QUESTIONS PRESENTED

1. Does the mandatory life sentence of Vermont's aggravated murder statute, 13 V.S.A. 2311 (a)(3)(c), violate proportionality principles and due process under the federal and state constitutions, rendering Petitioner's sentence unconstitutional?

2. Did the court of appeals deny Ms. O'Neill's due process rights by granting a certificate of appealability on two issues of its own choosing, thereby predetermining its affirmation of the district court's dismissal of the habeas petition, overlooking all constitutional claims she raised?

3. Did the district court deny Petitioner due process by failing to follow 28 U.S.C. 2253(c)(2), in not performing an overview of the constitutional claims in the habeas petition and a general assessment of the merits?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State of Vermont v. O'Neill, 209 A. 3d 1213, Judgment entered March 29, 2019

O'Neill v. Deml, No. 22-cv-140, U.S. District Court for the District of Vermont 28 U.S.C. 2254 Petition Docketed July 18, 2022

O'Neill v. Deml, No. 22-cv-140, U.S. District Court for the District of Vermont, Report & Recommendation, Magistrate Judge Kevin J. Doyle, February 16, 2023

O'Neill v. Deml, No. 22-cv-140, U.S District Court for the District of Vermont, Order of Judge Sessions, April 3,2023

O'Neill v. Deml, No. 23-620, U.S. Court of Appeals for the Second Circuit, Judgment entered August 27,2025

TABLE OF AUTHORITIES

Statutes and Rules:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 27, 2025.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 5, 2025, and a copy of the order denying rehearing appears at Appendix ____.
Denial was received November 11, 2025.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix ____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment, United States Constitution:

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life,liberty, or property, without due process of law.

Sixth Amendment, United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury... and to have the Assistance of Counsel for his defense.

Eighth Amendment, United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

Due Process Clause, Fourteenth Amendment,United States Constitution:

...nor shall any State deprive any person of life, liberty, or property without due process of law...

28 U.S.C. 2254..State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertainan application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground he is in custody in violation of the Constitution or laws or treaties of the United States.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless adjudication of the claim-

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. 2253

2253. Appeal

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

USCS Sec. 2254 Cases

Rule 11. Certificate of Appealability;Time to Appeal

(a) Certificate of appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

USCS Federal Rules of Appellate Procedure Rule 22

Rule 22. Habeas Corpus and Section 2255 Proceedings

(b) Certificate of Appealability

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. 2253(c). If the applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. 2254 or 2255 (if any), along with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

13 V.S.A. 2311. Aggravated Murder defined

(a) A person is guilty of aggravated murder if he or she commits a first or second degree murder, as defined in section 2301 of this title, and at the same time of his or her actions, one or more of the following circumstances was in fact present.

(3) At the time of the murder, the defendant also committed another murder.

(c) The punishment for aggravated murder shall be imprisonment for life and for no lesser term.

Vermont Public Defender Act

13.V.S.A. 5234. Notice of rights; representation provided

(a) If a person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is not represented by an attorney under conditions in which a person having his or her own counsel would be entitled to be so represented, the law enforcement officer, magistrate, or court concerned shall:

(2) If the person detained or charged does not have an attorney and does not knowingly, voluntarily and intelligently waive his or her right to have an attorney when detained or charged, notify the appropriate public defender that he or she is not so represented. This shall be done upon commencement of detention, formal charge, or post-conviction proceeding, as the case may be.

Vermont Rules of Evidence

Rule 104. PRELIMINARY QUESTIONS

(a) Questions of admissibility generally. Preliminary questions concerning...the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b); provided that in a criminal case if that the court rules that a confession is voluntary, the confession may be admitted but the issue of voluntariness shall be submitted to the jury.

STATEMENT OF THE CASE

STATE COURT PROCEEDINGS

At 8:58 on the evening of November 18,2014, a Vermont State Police dispatcher received a call from a complainant, Mike Bills, reporting that his friend and co-worker, Robin O'Neill, had called him allegedly confessing to shooting Steven Lott and his son Jamis in Steven's home where she resided. The call was transferred to the sergeant on duty who dispatched two troopers to the scene after informing them of the nature of the complaint. The sergeant was close behind them. They later testified to going to the scene believing that a female resident committed the crime and was still on the scene. Petitioner quickly became the suspect.

In his police interviews and testimony Mr. Bills stated that O'Neill's call woke him up and he put his hearing aids in after answering the phone.He was shocked, half asleep, and wasn't sure at first he could believe what she said. She sounded intoxicated and asked him to come pick up her dog before Steven's other two sons could kill it.

Defendant's sister called her moments after the call with Mr. Bills. O'Neill reportedly told her. "I shot them, I think they're dead, there's blood, there's so much blood." Her sister testified that the defendant sounded like she was in shock and that she was in shock as well. "I think she was totally out of it." When asked by her sister why she had shot them, O'Neill said, "I don't know," sounding bewildered and genuinely confused,

like she was trying to make sense out of the scene."

O'Neill was called out of the residence, immediately ordered to the ground, and was handcuffed behind her back. She was locked in the arresting trooper's cruiser with audio and video devices activated, for later transport to the barracks for interrogation. Police records indicate she was in custody at 9:30 pm. Both troopers observed signs of intoxication and impairment.

The other trooper and the sergeant searched and secured the scene in three to five minutes. Upon entering the kitchen from the garage they observed an individual, identified the next day as Steven Lott, on the floor in a pool of blood. They found another individual, identified the next day as Jamis Lott, under the kitchen table in a pool of blood. He had a revolver at his side. The medical examiner would later determine that Steven had been shot twelve times; Jamis three. Three hand guns were recovered from the kitchen, as well as fifteen nine millimeter cartridges and multiple bullet fragments.

While the arresting officer was looking for log books in his vehicle he noticed O'Neill's hands were now in front of her and pulled her from the cruiser to re-cuff her, engaging her in conversation. After her first, albeit unclear request for counsel, she made a full confession providing means and motive. The trooper neither warned her to remain silent nor contacted an attorney. At the May 9, 2016 Suppression Hearing he testified that he had recognized this, and a later reference to a state

appointed attorney as requests for counsel.

Before leaving the scene a preliminary breath test resulted in a .233 reading. During the half hour drive to the barracks O'Neill continued to make confused and self-contradictory statements. She was not informed that she was being recorded. The trooper testified that she was hyper-ventilating, highly emotional, substantially intoxicated, and rambling the entire time. She was heard talking to Steven Lott, Mike Bills, and her dog, as though they were in the cruiser with her.

Upon arrival at the barracks she was searched, her outer clothing was collected and her shoes were closely examined. Petitioner was then handcuffed to a chair in a processing room with audio and video recording devices activated.

The next officer to engage her in conversation was a trooper-detective. To him she said, "...please get me a public defender now." His response was, "Well, I'll be in the next room if you need anything, okay?." A detective-sergeant was designated the case agent. He and another detective were assigned to interview O'Neill, engaging her in conversation. They had been informed of her level of intoxication, told she was "chatty", and had watched the cruiser video. To them she requested the assistance of counsel five more times before they attempted to read her Miranda rights after more than two hours in custody. As they were reading the warnings she requested counsel for the ninth and tenth times. They continued to interview her until 2:13 am.

Ultimately, she requested the assistance of counsel ten times to four different officers. All ignored her. An attorney was not provided until minutes before her November 20,2014 arraignment, almost forty hours after she was arrested.

State police officers testified to their presumption of Petitioner's guilt prior to arriving at the scene. Before the November 19,2014 search, the Crime Scene Search Team (CSST) were briefed by the Commander of the Major Crime Unit, and the Overall Division Commander who were at the scene. The CSST were informed that the defendant was highly intoxicated, was detained at the scene, and was taken to the barracks for questioning. They were told she had confessed multiple times to numerous people.

The result was a perfunctory search and limited collection of evidence, omitting items that could have identified alternate perpetrators. Not all items enumerated in the search warrant were collected, including firearms found in the residence but left in place. Evidence which could only have been exculpatory went untested.

On November 20,2014 Petitioner was charged with two counts of Murder in the Second Degree in violation of 13 V.S.A. 2301 in Docket No. 1532-11-14 Wmcr. On February 9,2016 a charge of aggravted murder was added, in violation of 13 V.S.A. 2311(a)(3)(c), which required the state to prove that the defendant unlawfully caused the death of Steven and Jamis, with the intention to kill...defining aggravated murder to include the commission of two deaths at the same time. Life without parole is the statutory sentence.

Motion to Suppress & Hearing on Motion

On November 5, 2015, defendant's pre-trial counsel filed a motion to suppress her statements made in the cruiser, the processing room and during her formal interview on the grounds those statements were taken in violation of the Fifth Amendment, Due Process Clause of the Fourteenth Amendment, the Public Defender Act, and were the product of police misconduct.

The hearing was held May 9, 2016. The court's disregard for the defendant's Sixth Amendment right to a fair trial with an impartial jury was foreshadowed by its decision at the beginning of the hearing. Defendant's attorney raised the question of admitting the videos of O'Neill's confession and statements for the court to review in chambers. The court's response was, "In a less consequential case, with less media involvement, frankly I'd be inclined to do that. But I'm sure the media would like to see it. And I think the public is entitled to see it."

Defendant's confession and inculpatory statements appeared in the media, subsequent witness statements, and later in responses to jury questionaires.

At the hearing, all officers acknowledged that they had heard and understood the defendant's multiple requests for an attorney, viewed her as a suspect, knew how to contact the 24 hour on-call public defender, but did not.

Detective Holden testified that the defendant's demeanor was, "stressed out, highly emotional, and she was having a hard time focusing." She was called hysterical.

Court's Decision On Suppression

"The defendant asserted her right to counsel, her wish to have counsel with her during questioning, clearly, repeatedly, and unequivocally. Yet detectives essentially ignored these requests, continued as if she had not made them, and eventually convinced her, after complimenting her intelligence to waive her rights. This was a violation of the defendant's rights to counsel under Miranda, Edwards, and the Public Defender Act. As in (State v.) Trombley, no authority, no logic, permits the **interrogator** to proceed on his own terms as if the defendant has requested nothing. That was exactly what was done here. Accordingly, all of the defendant's statements to officers after she invoked her right to counsel to Detective Holden, just before **formal** questioning began, saying 'Of course I need a public defender,' are suppressed, and may not be admitted at trial."

The court found no violations of the Vermont or United States Constitution. It held that Miranda, Edwards and the Public Defender Act had been violated, but its remedy, unsupported by state or federal precedents, was to suppress only those statements made after defendant's **sixth** invocation, more than two hours after she was taken into custody and first requested counsel.

State Trial

The state tried the case for fourteen days beginning June 9, 2017, preceded by two days of voir dire. At trial the prosecution presented no direct evidence that the Petitioner had killed either Steven or Jamis Lott. Instead, relying on circumstantial evidence from a variety of sources that amounted to little more than innuendo and conjecture.

The prosecution theorized that Petitioner had motive and opportunity; was the only one home when police arrived. However, the evidence established that a friend of Steven Lott's was at the house earlier that day, and had no alibi for when he left or arrived home. Another friend testified to planning to visit at 8:05 pm. He claimed that he decided not to, returning to his own home a mile away at 8:30 pm. The evidence also established that many family members, friends and neighbors regularly visited Lott's home, and that doors and windows were never locked.

Motion Decisions During Trial

The trial court had a second opportunity to consider defendant's constitutional claims. During the June 2017 trial defense counsel made a Renewed Motion To Suppress, using defendant's third request for counsel to Det. Trooper Kinney, "Please get me a public defender now." Defense argument was that it does not get clearer than that.

The court's response was:

"...I'm still trying to see what it is that the police did

> wrong. They had her in custody, she was under arrest, and she asked for a lawyer. They didn't get her one but they didn't question her for some time...the Public Defender Act says that a person charged with having committed a serious crime...and if they don't knowingly and intelligently waive that right, they should notify the appropriate public defender after they have been charged. And, of course, there is the Sixth Amendment right and there are Miranda rights which are separate. And what I said in my order was that she had asserted her right to counsel and her wish to have counsel with her repeatedly, clearly, and unequivocally, that her rights under each of those standards had been violated because she continued those requests and her statements to the officers after she invoked her right to counsel."

Despite this finding, the court reasserted its decision to exclude statements made only after the defendant's sixth request for counsel. The court found that the Public Defender Act, analogous to Miranda, had been violated, but changed the wording to suit its ruling. The statute requires that the warnings be given "**upon commencement of detention** or later charge." The words "questioning" or "interrogation" do not appear in the Public Defender Act itself, or in the warning.

Two days later, defense counsel made a Motion For Judgment Of Acquittal on the basis that the state had not adduced sufficient evidence of all the elements of the crime, particularly with respect to intent. The state responded that there was "a reasonable inference that the shooter had intent to kill Steven and Jamis due to just the sheer number of shots. That clearly demonstrates intent to kill."

On June 28,2017, the date the jurors had been told they would be finished with their deliberations, Petitioner was convicted of aggravated murder by jury verdict.

Trial counsel, having exhausted defendant's $284,000, filed a Motion To Withdraw on July 20. On August 4,2017 Petitioner was sentenced to life without parole as mandated by statute. Later in August, an attorney from the Defender General's Office was assigned to prepare an appeal. Appellant's Brief was filed August 8,2018.

Direct Appeal

The Appellate Defender raised only three claims for relief: 1) the trial court's failure to suppress Petitioner's unwarned statements obtained in violation of the Fifth Amendment, Article 10, Miranda, the Public Defender Act, and the Due Process Clause was error; 2) Statements made while she was extremely intoxicated, experiencing trauma from the event, and threatened with continued incommunicado detention, were involuntary and should have been suppressed, and 3) the evidence was insufficient to support the conviction.

The Vermont Supreme Court affirmed the conviction by misrepresenting the claims raised. Petitioner did not argue that her statements were the product of custodial interrogation, or that police coerced her into making them.

The Appellate Decision - State v. O'Neill, 209 A.3d 1213 (2019)

> "We hold that the evidence sufficiently and fairly supports the conviction; and that the statements defendant seeks to suppress were not made in response to police interrogation, and were not the product of police coercion, and were thus properly admitted."
> Relying on Colo. v. Connolly and several distinguishable

> state cases, the court further held: "As the U.S. Supreme Court put it, a defendant's mental state can never alone justify suppression because it would enforce no constitutional guarantee unless we were to establish a brand new constitutional right- the right of a criminal defendant to confess to a crime only when properly motivated ...As in (state v.) Smith, defendant was emotionally unstable, she was in custody for hours; she requested counsel but was unable to speak to an attorney. While prolonged incommunicado detention could in certain circumstances overbear a suspect's will, we do not find the two and a half hours of detention, during which officers gave defendant water and tissues, and allowed her to use the restroom were coercive. Given that this was a double homicide case in which, as the state argues, officers needed time to familiarize themselves with the facts before questioning the defendant, the delay was not so excessive as to render the defendant's statements involuntary."

The court's decision confirms the prejudice resulting from the erroneous admission of O'Neill's confession and statements:

> "In sum, defendant's repeated confessions, her opportunity and motive, and the forensic evidence tying her to the murder weapon were sufficient for the jury to conclude beyond a reasonable doubt that she had killed Steven and Jamis."

"If the defendant is not advised of his Miranda rights prior to making a custodial statement an irrefutable presumption of compulsion arises, and the state cannot show that the suspect waived his rights voluntarily." United States v. Gaines, 295 F. 3d 293 (2d Cir. 2002), citing Or. v. Elstad, 470 U.S. 298 (1985).

The courts' findings that Petitioner's confessions were voluntary, allowing their admission at trial, should have resulted in an automatic reversal of her conviction.

The forensic the court refers to is Petitioner's

DNA on the nine millimeter handgun found at the scene. The state DNA expert testified that it gives no indication of when her DNA was deposited on the gun, before or after Steven's, also found on the gun. Other modifying evidence was overlooked, per the appellate standard of review.

Post-trial Motions

On July 10,2017, trial counsel filed a Renewed Motion For Judgment Of Acquittal and a Motion For New Trial. The motion for a new trial claimed error in the decisions on three motions made by the court, the first of which was the motion to supress. Counsel's argument was that the court erred in not excluding the statements made in the trooper's cruiser and the balance of the statements at the barracks. Due to defendant's extreme intoxication at the time she made the statements, they were not voluntary and should have been excluded under the Due Process Clause. The state did not meet its burden of proving by a preponderance of evidence that the statements were "the product of a rational intellect and the unfettered exercise of free will." The motion also averred the verdict was clearly against the weight of evidence.

The renewed motion for judgment of acquittal was premised on, "the state did not present substantial evidence at trial that would fairly and reasonably suggest that Robin O'Neill is guilty of the crime with which she was charged." The motion reviewed the evidence presented but not introduced.

In the trial court's August 3,2017 order denying both motions, there is no mention of voluntariness. On page 3, the court disposes of all questions of the violations of the Fifth Amendment and the Due Process Clause: "The court concludes that the decisions it made on these issues were correct, consistent with due process, and were based on applicable law. They do not provide a basis for a new trial."

State Post-Conviction Relief

A state appointed attorney from the Prisoners' Rights Office filed a petition for post-conviction relief on March 11, 2020- O'Neill v. State, 20-cv-00127. It consisted of one claim: "ineffective assistance of counsel; additional reasons to be determined by counsel." It was filed in the wrong county, an incorrect venue. No additional reasons were set forth.

Another attorney, also from the Prisoners' Rights Office, filed an amended petition on July 6,2021. One specific claim of ineffective assistance was made, "Attorney Carleton failed to conduct any investigation into the sufficiency of the evidence or Ms. O'Neill's defenses." The second claim for relief was:Illegal Sentence. "Because 13 V.S.A. 2311(a)(3)(c) violates proportionality principles and due process under the state and federal constitutions, Ms. O'Neill's sentence is illegal and must be stricken."

After years of appointed counsels' failure to prepare a second amended petition including all of Petitioner's constitutional claims, Petitioner filed a Notice of Appearance with

Windham Superior Court on October 10,2024, and a Second Amended Petition For Post-Conviction Relief on December 3,2024. The state's third motion to dismiss was denied August 28,2024. There has been no further progress in the case.

FEDERAL COURT PROCEEDINGS

Habeas Petition

Concerned that the initial petition for post-conviction relief filed in an incorrect venue would not toll the 1 year limitation period under 28 U.S.C. 2244(d)(2) as a "properly filed application for state post-conviction or other collateral review," Petitioner filed an application for a writ of habeas corpus pursuant to 28 U.S.C. 2254, docketed July 18,2022.

Nine claims for relief from constitutional violations were raised, including the three exhausted claims of violations of her Fifth, Sixth and Fourteenth Amendment Due Process Clause rights. The claim that the admission of Petitioner's unwarned, involuntary confession at trial should have resulted in reversal was made. The other claims for relief include: jury selection issues; the presumption of guilt and resulting lack of investigation; the prosecutor's egregiously prejudicial summation in which Petitioner's guilt was proclaimed as fact eleven times, said to be angry seventeen times, called a liar five times, all without evidentiary support; jury instructions that omitted any instruction on voluntariness, or on the government's burden to prove the absence of passion or provocation in order

to establish murder of any degree; prosecutorial misconduct by all three prosecutors that interfered with the administration of justice; the state courts' fact finding errors; ineffective assistance of counsel. Fifty exhibits cited in the Petition were submitted in support.

In lieu of an answer, the state filed a limited motion to dismiss , and a motion for extension of time to answer on November 10,2022, arguing that the appellant had not exhausted her ineffective assistance claim in state court.

In a reply filed Novemebr 30,2022, the Appellant opposed the motion, presented substantial caselaw on exceptions to exhaustion and the futility doctrine.

The state filed a December 7,2022 Reply Memorandum in Further Support on the same grounds as previously.

The Appellant filed a December 7,2022 Renewed Motion For Appointment of Counsel. In a Memorandum of Law, the meritorious claims of constitutional violations were reviewed, as well as the clearly established federal law that the state courts overlooked.

Petitioner's Reply Memorandum In Further Opposition of January 4,2023 again points out that the ineffective assistance claim is one of nine claims for relief from constitutional violations. The futility of Vermont's post-conviction remedies is supported by caselaw, as is the argument that extraordinary circumstances apply in Petitioner's case.

The United States Magistrate Judge Kevin J.Doyle issued

his Report & Recmmendation on February 16,2023, recommending that the state's motion to dismiss be granted because the appellant had not exhausted her ineffective assistance of counsel claim in the state courts.

The Appellant filed her objections to the Report & Recommendation on March 13,2023. arguing that the report was incomplete, inaccurate, and that her prior pleadings had been overlooked. It was argued that contrary to the requirements of In re Winship, 397 U.S. 358 (1970), the government did not prove all the facts and elements of the crime beyond a reasonable doubt. The state court's objectively unreasonable findings, and violations of Appellant's constitutional rights were reviwed. The nine grounds for habeas relief were detailed with supporting caselaw. The role of Vermont caselaw in the futiity of state court remedies was examined, as were exceptions to exhaustion.

District Court Judge Sessions issued his adverse final order on April 3,2023, dismissing Appellant's 28 U.S.C. 2254 petition for failure to exhaust state court remedies, without reaching the merits. It was dismissed without prejudice, and the order stated that Appellant could refile her petition when her claims had been exhausted in state court. He neither issued nor denied a certificate of appealability until almost three months later, failing to comply with the requirements of Rule 11(a): "The district court **must** issue or deny a certificate of appealability when it enters a final order adverse to the applicant."

Appellant filed a Notice of Appeal on April 7,2023, and on May 2,2023 filed a Scheduling Request for a Brief Filing deadline of July 4,2023.

On June 20,Appellant received an order from the court of appeals, dated June 12,2023 stating that, "The district court has denied permission (to appeal) by refusing to issue a certificate of appealability," and "that the appeal may be subject to dismissal by July 5,2013 unless by that date the applicant has flied a motion for a certificate of appealability that complies with this order." The order was entered three minutes after entry of Appellant's motion for recusal of Judge Beth Robinson.

When an Associate Justice with the Vermont Supreme Court, Judge Robinson wrote the March 29,2019 opinion affirming the trial court's objectively unreasonable determination that there had been no violations of Petitioner's constitutional rights under the Vermont or United State Constitutions or denials of the protection of seminal state and federal laws. The court's factual findings were not supported by the record; were largely an adoption if the prosecution's insinuations and conjecture.

Having received nothing from the court regarding a certificate, Appellant called the deputy clerk on June 29,2023, and was informed that Judge Sessions had denied the certificate of appealability two days before, on June 27.

On June 29,2023, the Appellant filed a motion for enlargement of time to file a motion for issuance of a certificate, or in the alternative, to recognize Appellant's April 7 Notice of

Appeal to constitute a request for a certificate of appealability in accordance with Federal Rule of Appellate Procedure Rule 22(b)(2). The motion opined that since her brief was dated and mailed the previous day, a motion for a certificate would be duplicative.

Appellant's June 28 Brief was entered July 11,2023. Seven days later the court of appeals issued an order granting an extension of time until August 18 to file her motion. The order was received on July 25.

The Court overlooked its own, as well as U.S. Supreme Court precedents on considering Appellant's notice of appeal to constitutue a request for a certificate under FRAP Rule 22(b)(2). In United States v. Ferranti, 2023 U.S. App. LEXIS 10795, the court held, "Therefore we construe Ferranti's notice of appeal as supplemented by his brief, as a request for a COA. See Fed. R. App. P. 22(b)(2)." And in United States v. Fletcher, 2019 U.S. App. LEXIS 36768 (2d Cir. 2019), "Following the Supreme Court's formulation in Slack (v. McDaniel), 529 U.S. 473, 484 (2000), we construe Appellant's notice of appeal as a motion for a certificate of appealability. See Fed.R. App. P. 22(b)(2).

The Supreme Court held in Hohn v. United States, 523 U.S. 236, 240, 244 (1998), "If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request to the judges of the court of appeals. Fed. R. App. R. Rule 22(b)." And in Slack, Id. at 483, As AEDPA applied,

the Court of Appeals should have treated the notice of appeal as an application for a certificate of appealability. Fed. Rule App. Proc. 22(b)."

Denial of the Certificate of Appealability

Judge Sessions' June 27,2023 Order denied Appellant a certificate of appealability under 28 U.S.C. 2253(c)(2) and FRAP Rule 22(b), "because Petitioner has failed to make a substantial showing of a denial of a federal right, and because her grounds for relief do not present issues that are debatable among jurists of reason, which could have been resolved differently, or which deserve further proceedings. Citing Slack v. McDaniel, 529 U.S. 473,489 (2000)."

In Appellant's district court pleadings, the multiple claims of denials of her most fundamental constitutional rights are supported by bedrock federal cases decided by jurists of reason. Their holdings demonstrate that the state courts' decisions in her case were unreasonable and should have been resolved differently, and that her Petition deserves further proceedings.

The denial was on procedural grounds, never reaching the underlying merits which establish the debatability of the district court's conclusions. Appellant presented substantial caselaw on exceptions to exhaustion and the futility doctrine. Vermont caselaw was examined regarding the futility of state court remedies; establishing extraordinary circumstances. All arguments and authorities were overlooked or misapprehended by

the district court and the Court of Appeals.

When the district court denies a habeas petition on procedural grounds without reaching the merits of a prisoner's claims, as in O'Neill's case, a certificate should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, Id.

Appellant-Petitioner opines that her district court pleadings and Brief, entered by the court of appeals on July 11,2023, have so shown.

The certificate determination under 2253(c)(2) requires an overview of the claims in the habeas petition and a general assessment of their merits. "We look to the district court's application of AEDPA to the petitioner's constitutioal claims and ask whether that resolution was debatable among jurists of reason." Miller-El v. Cockrell, 537 U.S. 322,337(2003).

Had the district court complied with these requirements, a certificate should have issued.

On October 15,2025, Appellant moved the panel, comprised of Judges Chin, Sullivan and Merriam, for a petition for rehearing pursuant to the Federal Rules of Appellate Procedure Rule 40(h)(1).

On April 23,2024, Judges Park, Lee and Merriam granted Appellant's motions for a certificate of appealability and for

leave to file an oversized motion for a certificate. A certificate was granted on two issues chosen by the panel; not raised by the Appellant: whether the district court provided "an appropriate explanation (to appellant) of the available options and consequences of not following required procedures; and whether compliance with Zarvela (v. Artuz) requires a district court to explain to appellant the effect of a dismissed petition on time barred and unexhausted claims."

The panel's August 27,2025 decision in O'Neill v. Deml, 2025 U.S. App. LEXIS 22034, affirmed the district court's dismissal of Appellant's habeas petition. The decision was predetermined by the panel's choice of those two specific issues raised and decided in Pliler v. Ford,342 U.S. 225(2004). The panel's analysis was based on arguments and authority the Appellant never raised or relied upon in any pleading. By granting the certificate on issues it chose, the panel was able to overlook all of Petitioner's constitutional claims.

The panel states that in Appellant's 2254 petition, "O'Neill asserted a variety of constitutional challenges, including a claim of ineffective assistance of counsel." Ineffective assistance is the last of nine cliams for relief. The first eight involve the state courts' errors based on unreasonable applications of clearly established federal law, and violations of her Fifth, Sixth and Fourteenth Amendment Due Process Clause rights. Fact finding errors by the state courts is the eighth claim.

Arguing the issues they selected, the panel held that,

"the Constitution does not require judges to take over the chores for a pro se defendant that would normally be attended to by trained counsel."

The panel appointed Attorney Randall Unger for the sole purpose of briefing them on the two issues they raised. His brief and Appendices I and II are dated December 9,2024; Respondent's brief, March 10,2025.

Appellant motioned the district court for appointment of counsel under the Criminal Justice Act three times: July 4, 2022; December 24, 2022; March 4,2023. She was denied representation each time.

The panels' decision in O'Neill v. Deml states that the jury convicted Appellant for aggravated murder, and the state court judge sentenced her to life in prison. The life sentence is mandated by statute. Neither the jury nor judge had any discretion. In her pleadings Appellant demonstrated that the government could not, and did not prove all the essential elements of aggravated murder beyond a reasonable doubt.

The state and federal courts have overlooked the due process guarantee of the Fourteenth Amendment reqiring that no person shall be criminally convicted "except upon sufficient proof-- defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307,316 (1979), (citing In re Winship,307 U.S. 538, 364 (1970).

"The United States Court of Appeals for the Second Circuit reviews de novo a district court's denial of a petition for

habeas corpus." Wood v. Ercole, 644 F. 3d 83 (2d Cir. 2011). This case involves several of the same constitutional claims raised by the Appellant. The Court held that inmate Wood was entitled to habeas relief pursuant to 28 U.S.C. 2254 because a videotaped statement he made in police custody after requesting counsel was erroneously admitted at trial in violation of inmate's Fifth and Fourteenth Amendment rights, depriving him of his right to counsel.

The Court determined that without his statement the state's case was substantially weaker, and a guilty verdict far from assured. The error was found to have a substantial and injurious effect on the verdict. The Court reversed the district court's dismissal, ruling Wood was entitled to habeas relief. District court Judge Sessions was one of the three judges deciding Wood's case.

"Evidence collected in violation of a suspect's right to counsel is inadmissible as part of the prosecution's case-in-chief." See Miranda, 384 U.S. at 494; United States v. Morales, 788 F.2d 833, 885 (2d Cir. 1986).

The prosecution bookended its case-in-chief with O'Neill's cruiser and barracks videos, quoting them in summation.

In O'Neill v. Deml the panel states, "On appeal, O'Neill does not dispute that her "mixed" petition included both exhausted and unexhausted claims; instead she argues that the district court erred because it did not inform her she could have requested a stay of the unexhausted claims or filed an amended petition that only included exhausted claims."

Appellant did not raise that claim- the panel did. The district court and the Court of Appeals overlooked the substantial caselaw presented in Appellant's pleadings supporting exceptions to exhaustion and the futlity doctrine.

The fully exhausted claims rejected by the state supreme court cannot be relitigated "...defendant's claims could not be relitigated after adverse decisions on direct appeal." In re Kasper, 142 Vt. 31 (1982). And, "absent exigent circumstances, a matter adversely decided on direct appeal cannot be relitigated." In re Stewart, 140 Vt. 351, 361, 438 A.2d 1106, 1110 (1981).

The following federal case are on point with the state courts' unreasonable decisions in Appellant's case, and the authority of federal courts to issue the writ in such cases.

Section 2254(d) reflects the view that habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems." Jackson v. Virginia, 443 U.S. 307, 332, n.5, 99 S.Ct 2781, 61 L.Ed. 2d 560 (1979). (Stevens, J. concurring). Also, 28 U.S.C. 2254(d), "preserves the authority to issue the writ in cases where there is no possibility fair-minded jurists could disagree that the state court's decision conflicts with U.S. Supreme Court precedents...As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was error well understood and comprehended

in existing law beyond any possibility for fairminded disagreement." Harrison v. Richter,562 U.S. 86, 102, 131 (2011).

In Strickland v. Washington, 446 U.S. 668,684 (1984), the Court agreed with the Court of Appeals that "the exhaustion rule of Rose v. Lundy requiring dismissal of of mixed petitions, though to be strictly enforced is not jurisdictional." 446 U.S. at 515-20. The strict exhaustion dictate of Rose v. Lundy held that habeas courts must dismiss petitions containing both exhausted and unexhausted claims...Rose v. Lundy, however, has not survived Granberry v. Greer intact. After Granberry, a federal appellate court may "in extraordinary cases" requiring "prompt federal intervention," reverse the district court's dismissal and reach the merits of the mixed petition." Weaver v. Foltz, 888 F.2d 1097 1100 (6th Cir. (1989).

The failure to exhaust state court remedies does not deprive an appellate court of jurisdiction to consider the merits of a habeas application. There are some cases in which it is appropriate for an appellate court to address the merits of a habeas corpus petition notwithstanding complete exhaustion. His failure to pursue his available state court remedies is not an absolute bar to appellate consideration of his claims. Granberry v. Greer, 481 U.S. 129,(1987).

The Granberry Court cited Frisbie v. Collins, 342 U.S. 519 (1952), in support of its assertion that a claim embodying an "evident miscarraige of justice" should be reached by a court of appeals notwithstanding the lack of exhaustion...

a claim so self-evidently meritorious that a federal court had to reach it in order to rectify a "miscarriage of justice."

"Courts have excused the exhaustion requirement when there is no doubt that the petitioner's constitutional rights have been 'plainly and grossly' violated.'" Emmett v. Ricketts, 397 F. Supp 1025, 1047 (N.D. Ga. 1975).

The Court held that rather than automatically dismissing a habeas petition for failure to exhaust state remedies, the district court was required to determine whether justice would be better served by insisting on exhaustion or reaching the merits of the petition. Plunkett v. Johnson, 828 F.2d 954 (2d Cir. 1987).

"Exhaustion is not necessary where delay before entrance to a federal forum, which would be required, is not justified where the state courts' attitude towards petitioner's claims are a foregone conclusion." Carter v. Estelle, 677 F.2d 457 (5th Cir. 1982).

On appeal, the Vermont Supreme Court failed to correct the extreme malfunctions of the trial court, compounding the errors by misrepresenting Appellant's claims. Appellant was denied due process; was deprived of liberty for life without the basic structure of a fair trial.

The district court and Court of Appeals denied Petitioner due process and habeas relief by failing to reach the merits of her constitutional claims.

REASONS FOR GRANTING THE WRIT

This Court has previously granted certiorari to review the constitutionality of state statutes including: Graham v. Florida, 560 U.S. 48 (2010); Montgomery v. Louisiana, 577 U.S. 190 (2016) which held, "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment."

The question of the constitutionality of the mandatory life sentence of Vermont's aggravated murder statute has significance beyond the Petitioner's case. Others have been sentenced under it, and others will be if it is allowed to stand. Consideration of the question by the Court could serve as a reminder to the states that they may not legislate contrary to the public's constitutional rights.

In Miller v. Pate, 386 U.S. 1 (1967), this Court granted certiorari to consider whether the trial that led to the petitioner's conviction was constitutionally valid. Reasons to do so here are provided by this case.

The state trial judge held that the state police had violated Miranda, Edwards and the Vermont Public Defender Act, analogous to Miranda, but suppressed Petitioner's unwarned confession and statements only after her sixth request for the assistance of counsel. Despite ten requests for counsel to four officers, Ms. O'Neill was not provided an attorney until her arraignment, almost forty hours after her arrest.

The video tapes of her unwarned confession and statements in the police cruiser and barracks processing room were admitted at trial. The prosecution bookended its case-in-chief with them, quoting them in summation.

There were no jury instructions on voluntariness given. despite Vermont Rule of Evidence 104 which requires one. Controlling state and federal law requires one. No instruction was given on the government's burden of proving the absence of passion on provocation to find a defendant guilty of murder of any degree. Passion or provocation was the crux of the prosecution's theory of motive.

The prosecutor's egregiously prejudicial summation in which the Petitioner's guilt was proclaimed as fact eleven times, said to be angry seventeen times, and called a liar five times, all without supporting evidence, so infected the trial with unfairness as to make Ms. O'Neill's conviction a denial of due process.

There are many more constitutional violations involved. The case should have been brought to this Court after the Vermont Supreme Court's affirmation, but the state appointed appellate defender refused to file a petition. She had only raised three claims of violations of Petitioner's Fifth, Sixth and Fourteenth Amendment Due Process Clause rights which might have been sufficient to render the conviction invalid. This Court could now decide if it grants the writ.

A central issue of this case is the failure of both federal courts to recognize the substantial body of federal case-law on exceptions to exhaustion; dismissing the habeas petition on procedural grounds without an overview of the merits. The instant petition and previous pleadings present cases supporting exceptions from this Court, the Fifth and Sixth Circuits and the Second Circuit itself, as well as several district courts including the Southern District of New York.

Not followed by the district or court of appeals was the Plunkett v. Johnson, 828 F.2d 954 (2d Cir. 1987), holding "the courts of appeal are to exercise discretion in each case to decide whether the administration of justice would be better served by insisting on exhaustion or by reaching the merits of the petition forthwith."

This case provides the Court with the opportunity to provide futher guidance on the lower federal courts' duty to excuse exhaustion in cases such as Petitioner's which present special or extraordinary circumstances.

Another matter for the Court's consideration is whether the court of appeals abused its discretion by granting Ms.O'Neill a certificate of appealability on two issues of its choosing, ignoring the constitutional claims she actually raised; thereby predetermining their affirmation of the dismissal of the habeas petition, denying her due process.

CONCLUSION

Petitioner has been deprived of fundamental rights guaranteed by th Fifth, Sixth, Eighth and Fourteenth Amendment Due Process Clause of the Constitution of the United States, and seeks relief in this Court to restore those rights. In consideration of the foregoing, Petitioner respectfully requests the Court to issue a writ of certiorari, vacate the judgment of the Second Circuit Court of Appeals, and grant habeas corpus relief from the unconstitutioal incarceration.

Respectfully submitted,

Robin O'Neill

Date: February 2, 2026